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**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE  
COMPANY,

USA CAPITAL REALTY ADVISORS,  
LLC,<sup>1</sup>

USA CAPITAL DIVERSIFIED TRUST  
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED  
FUND, LLC,<sup>2</sup>

USA SECURITIES, LLC,<sup>3</sup>  
Debtors.

**Affects:**

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR<sup>1</sup>  
Case No. BK-S-06-10729-LBR<sup>2</sup>

**CHAPTER 11**

Jointly Administered Under Case No.  
BK-S-06-10725 LBR

**FIRST OMNIBUS OBJECTION OF  
USACM TRUST TO PROOFS OF  
CLAIM BASED UPON  
INVESTMENT IN PRESERVE AT  
GALLERIA, LLC LOAN; AND  
CERTIFICATE OF SERVICE**

Date of Hearing: January 22, 2009  
Time of Hearing: 9:30 a.m.

The USACM Liquidating Trust (the "USACM Trust") moves this Court, pursuant to § 502 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an

<sup>1</sup> This bankruptcy case was closed on September 23, 2008.

<sup>2</sup> This bankruptcy case was closed on October 12, 2007.

<sup>3</sup> This bankruptcy case was closed on December 26, 2007.

1 order disallowing Proofs of Claim filed by individual investors (“Direct Lenders”) against  
2 USA Commercial Mortgage Company (“USACM”) that are based upon an investment in  
3 the Preserve At Galleria, LLC Loan (the “Preserve At Galleria Loan”). This Objection is  
4 supported by the Court’s record and the Declaration of Edward M. Burr in Support of  
5 Omnibus Objections to Proofs of Claim Based Upon the Investment in Preserve At  
6 Galleria, LLC Loan filed with the Court today (the “Burr Decl.”).

7 **I. INTRODUCTION**

8 1. On about September 27, 2006, the borrower paid off the Preserve At Galleria  
9 Loan in full. In turn, USACM distributed the proceeds from the Preserve At Galleria Loan  
10 to the Direct Lenders who invested in the Preserve At Galleria Loan. The Direct Lenders  
11 were thus paid in full, subject to servicing fees and any other charges under their  
12 respective Loan Servicing Agreements and this Court’s orders, including the Confirmation  
13 Order. Accordingly, there is no longer any basis for a Direct Lender claim against  
14 USACM based upon an investment in the Preserve At Galleria Loan.

15 2. This Objection seeks to disallow Direct Lender claims that are based entirely  
16 upon an investment in the Preserve At Galleria Loan. Those claims are listed in **Exhibit**  
17 **A**, attached.

18 **II. JURISDICTION**

19 1. The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334  
20 and 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core  
21 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

22 2. The statutory predicate for the relief requested herein are 11 U.S.C. § 502  
23 and Bankruptcy Rule 3007.

24 **III. BACKGROUND**

25 1. On April 13, 2006 (“Petition Date”), USACM, USA Securities, LLC (“USA  
26 Securities”), USA Capital Realty Advisors, LLC (“USA Realty”), USA Capital

1 Diversified Trust Deed Fund, LLC (“DTDF”), USA Capital First Trust Deed Fund, LLC  
2 (“FTDF,” together with DTDF, the “Funds”) (collectively, the “Debtors”), filed voluntary  
3 petitions for relief under chapter 11 of the Bankruptcy Code. Debtors continued to operate  
4 their businesses, if any, as debtors-in-possession pursuant to sections 1107(a) and 1108 of  
5 the Bankruptcy Code. Debtors’ post-petition management of the Debtors was under the  
6 direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC  
7 (“Mesirow”), who served as the Chief Restructuring Officer.

8 2. USACM is a Nevada corporation that, prior to the Petition Date, was in the  
9 business of underwriting, originating, brokering, funding and servicing commercial loans  
10 primarily secured by real estate, both on behalf of investors and for its own account.

11 3. That business included the solicitation of individual investors to purchase  
12 fractional interest in loans that USACM originated and then serviced. These investors,  
13 totaling approximately 3,600 as of the Petition Date, are referred to as “Direct Lenders” in  
14 USACM’s bankruptcy case and in this Objection.

15 4. Although USACM serviced and sometimes originated the loans in which the  
16 Direct Lenders invested, generally USACM was not a borrower on these loans.

17 5. On September 14, 2006, the Court entered its Order Setting Deadline to File  
18 Proofs of Claim and Proofs of Interest [Docket No. 1280] (the “Bar Date Order”). The  
19 Bar Date Order established 5:00 p.m., prevailing Pacific Time, on November 13, 2006, as  
20 the deadline (“Bar Date”) for creditors to file proof of claims.

21 6. On September 25, 2006, Debtors served a copy of the Bar Date Order on  
22 their service lists [Docket No. 1358]. All Creditors, including the Direct Lenders, were  
23 served with a copy of the Bar Date order as well [Docket No. 1358].

24 7. On November 6, 2006, a stipulation was filed and an order entered extending  
25 the Bar Date for Direct Lenders only to file proofs of claim until January 13, 2007 [Docket  
26 No. 1729].

1           8.       On January 8, 2007, this Court entered its Order Confirming the “Debtors’  
2 Third Amended Joint Chapter 11 Plan of Reorganization” as Modified Herein [Docket No.  
3 2376] (the “Confirmation Order”).

4           9.       Under the Plan, the USACM Trust is the successor to USACM with respect  
5 to standing to seek allowance and disallowance of Claims.

6           10.      Under the Plan, unsecured claims of Direct Lenders against USACM are  
7 classified in Class A-5. Allowed Unsecured Claims “shall receive a beneficial interest in  
8 the USACM Trust, and on account of their Allowed Claim may receive a Pro Rata Share  
9 of the assets of the USACM Trust after satisfaction of all Allowed unclassified Claims,  
10 Allowed Class A-1, A-2, and A-3 Claims, and all post-Effective Date fees, costs, and  
11 expenses of implementation of the USACM Plan for USACM and the USACM Trust.”

12           11.      The USACM Trust exists as of the Effective Date of the Plan, which was  
13 March 12, 2007. Geoffrey L. Berman is the Trustee.

14           12.      **Exhibit A** to this Objection lists Proofs of Claim filed by Direct Lenders that  
15 appear to be based entirely upon an investment in the Preserve At Galleria Loan. (Burr  
16 Decl. ¶ 7.) For each claim listed, **Exhibit A** identifies the Proof of Claim number, the  
17 claimant, the claimant’s address, and the total amount of the claim. The claims listed in  
18 **Exhibit A** are referred to hereafter as the Preserve At Galleria Claims. (Burr Decl. ¶ 7.)

19           13.      On June 15, 2006, Mesirow Financial Interim Management, LLC filed the  
20 original schedules and statements; according to schedule F-1 of the original schedules and  
21 statements several Direct Lenders in the Preserve At Galleria were owed money for  
22 unremitted principal. Based on the original schedule F-1, Mesirow created proofs of  
23 claims with amounts for unremitted principal preprinted on them and these were mailed to  
24 the affected Direct Lenders. Upon further review and reconciliation, Mesirow determined  
25 there was no unremitted principal related to the Preserve At Galleria loan. Accordingly,  
26 on March 7, 2007, a 2nd amendment to schedule F-1 (which supersedes the original and

the 1<sup>st</sup> amendment to schedule F-1) was filed which changed the scheduled amounts for unremitted principal in the Preserve At Galleria loan to \$0. USACM has previously informed Direct Lenders that the amounts set forth in the prior schedule F-1 have been corrected and superseded by the amounts indicated in the recent investor statements. (Burr Decl. ¶ 8.)

14. On or about September 27, 2006, the Preserve At Galleria Loan was paid off in full, as reflected in USACM's books and records. (Burr Decl. ¶ 9.) Shortly thereafter, USACM processed the payoff and distributed the proceeds to the Direct Lenders on the Preserve At Galleria Loan. (Burr Decl. ¶ 9.)

15. The Direct Lenders were in turn paid in full, subject to servicing fees and any other charges under their respective Loan Servicing Agreements and this Court's orders, including the Confirmation Order. In general, the Direct Lenders received their principal and interest on the Preserve At Galleria Loan, less sums withheld for servicing fees, servicer advances, Prepaid Interest and sums known as the 2% Holdback pursuant to the Confirmed Plan. On the Effective Date of the Plan, the Prepaid Interest was applied, a portion of the 2% Holdback was applied to the allowed claims of the Direct Lender Committee, and the balance paid to the Direct Lenders. (Burr Decl. ¶ 10.)

16. Accordingly, the USACM Trust no longer has further obligations to the Direct Lenders arising out of the Preserve At Galleria Loan because, pursuant to USACM's books and records, the Preserve At Galleria Loan has been repaid in full, and the Direct Lenders have received such payment. (Burr Decl. ¶ 11.)

#### IV. APPLICABLE AUTHORITY

1. Under the Bankruptcy Code, any Claim for which a proof of claim has been filed will be allowed unless a party in interest objects. If a party in interest objects to the proof of claim, the Court, after notice and hearing, shall determine the amount of the Claim and shall allow the Claim except to the extent that the Claim is "unenforceable

1 against the debtor . . . under any . . . applicable law for a reason other than because such  
2 claim is contingent or unmatured.” 11 U.S.C. § 502(b).

3 2. The USACM Trust is entitled to object to proofs of claim under 11 U.S.C.  
4 § 502(a). This objection is timely under the confirmed Plan, as the deadline for such  
5 objections has been extended to February 12, 2008, by this Court’s orders.

6 3. A properly filed proof of claim is presumed valid under Bankruptcy Rule  
7 3001(f). However, once an objection to the proof of claim controverts the presumption,  
8 the creditor ultimately bears the burden of persuasion as to the validity and amount of the  
9 claim. *See Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*,  
10 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995), *aff’d*, 91 F.3d 151 (9th Cir. 1996). The ultimate  
11 burden of proof as to the validity of a proof of claim “remains at all times upon the  
12 claimant.” *Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell)*, 223 F.3d 1035,  
13 1039 (9th Cir. 2000).

#### 14 **V. OBJECTION TO CLAIMS LISTED IN EXHIBIT A**

15 1. **Exhibit A** attached hereto and incorporated herein by this reference lists the  
16 Preserve At Galleria Claims. The USACM Trust objects to these claims because they are  
17 based entirely upon an investment in the Preserve At Galleria Loan. According to  
18 USACM’s books and records as reconstructed by Mesirow, the Preserve At Galleria Loan  
19 has been repaid in full, and the Direct Lenders have received such payment, as provided  
20 by the applicable Loan Servicing Agreement, this Court’s orders and the Confirmation  
21 Order.

22 2. The USACM Trust reserves the right to further object to any and all Claims,  
23 whether or not the subject of this Objection, for allowance and/or distribution purposes on  
24 any other grounds. The USACM Trust further reserves the right to modify, supplement  
25 and/or amend this Objection as it pertains to any Claim or claimant herein.  
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**VI. CONCLUSION**

1. The USACM Trust respectfully requests that the Court disallow in full the claims listed in **Exhibit A**. The USACM Trust also requests such other and further relief as is just and proper.

Dated: December 3, 2008.

LEWIS AND ROCA LLP

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LEWIS  
AND  
ROCA  
LLP  
LAWYERS

1 Copy of the foregoing mailed by first class  
2 Postage prepaid U.S. Mail on  
3 December 3, 2008 to:

4 All parties in interest listed on  
5 Exhibit A attached.

6 /s/ Renee L. Creswell  
7 Renee L. Creswell  
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